IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

G. SPENCER MILLER,

Appellant,

v.

GREG DOMBEK,

Respondent.

DOCKET NUMBER WD74604

MISSOURI COURT OF APPEALS WESTERN DISTRICT

DATE: November 20, 2012

APPEAL FROM

The Circuit Court of Nodaway County, Missouri The Honorable Joel A. Miller, Judge

JUDGES

Division Two: Lisa White Hardwick, P.J., and James M. Smart, Jr. and Karen King Mitchell, JJ.

ATTORNEYS

G. Spencer Miller Barnard, MO

Appellant, pro se,

Gregory Dombek Platte City, MO

Respondent, pro se.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

G. SPENCER MILLER,)
	Appellant,))
v.		OPINION FILED:
		November 20, 2012
GREG DOMBEK,)
)
	Respondent.)

WD74604 Nodaway County

Before Division Two Judges: Lisa White Hardwick, Presiding Judge, and James M.

Smart, Jr., and Karen King Mitchell, Judges

G. Spencer Miller appeals the trial court's judgment in favor of Greg Dombek on Miller's breach of contract action, wherein Miller alleged that he was a third-party beneficiary to a contract executed between Dombek and Dombek's ex-wife regarding visitation of their minor child. Because we find that there was no valid contract from which Miller could benefit, we affirm the trial court's judgment.

AFFIRMED.

Division Two holds:

- (1) The agreement executed by Dombek and his ex-wife did not constitute a valid contract, as there was no consideration.
- (2) Although forbearance of a legal right can constitute consideration to support a contract, Dombek's ex-wife had no legal right to withhold custody of their child under the existing custody judgment. A party to a custody judgment cannot unilaterally determine whether "good cause" exists to withhold custody; that determination must be made by a court. Consequently, her agreement to allow Dombek the visitation to which he was already entitled under the judgment (or, according to Miller's argument, to forgo her "right" to withhold visitation) did not constitute forbearance. Because she had no legal right that she was forbearing, there was no consideration.

(3) Because the contract was invalid, it is irrelevant whether Miller was an intended third-party beneficiary in the event of a breach.

Opinion by: Karen King Mitchell, Judge

November 20, 2012

* * * * * * * * * * * *

THIS SUMMARY IS $\underline{\mathbf{UNOFFICIAL}}$ AND SHOULD NOT BE QUOTED OR CITED.